

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AKILAH WHITLEY,

Petitioner,

v.

SABINA KAPLAN, Superintendent,

Respondent.
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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

10 CV 6657 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Lisa M. Smith’s Report and Recommendation (“R&R”), dated August 9, 2013, on petitioner Akilah Whitley’s petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, from her November 14, 2007, conviction in Westchester County Court. (Doc. #19). Judge Smith recommended the Court deny the petition.

The Court presumes familiarity with the factual and procedural background of this case.

For the following reasons, the Court adopts the R&R as the opinion of the Court, and denies the petition.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within 14 days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections

have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates her original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

By Order dated September 3, 2013 (Doc. #21), the Court granted petitioner's application for an extension of time to object to the R&R until October 25, 2013.

Petitioner did not object to Judge Smith's thorough and well-reasoned decision.

The Court has carefully reviewed the R&R and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the R&R is adopted in its entirety as the opinion of the Court.

The petition for a writ of habeas corpus is DENIED.

The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Dated: December 10, 2013
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge